

EXHIBIT 1

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT 311 HON. CARL J. WEST, JUDGE
4

5 FIRST STATE INSURANCE COMPANY,)
6 ET AL.,)
7 PLAINTIFF,)
8 VS.) NO. BC 354664
9 VULCAN MATERIALS COMPANY, ET) BC 328022
AL,)
10 DEFENDANT.)
11

COPY

13 REPORTER'S TRANSCRIPT OF PROCEEDINGS

14 WEDNESDAY, MARCH 12, 2008

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1 CASE NUMBER: BC 354664
2 CASE NAME: FIRST STATE INSURANCE COMPANY
3 VS. VULCAN MATERIALS COMPANY
4 LOS ANGELES, CALIFORNIA WEDNESDAY, MARCH 12, 2008
5 DEPARTMENT 311 HON. CARL J. WEST, JUDGE
6 REPORTER: WENDY OILLATAGUERRE, CSR #10978
7 TIME: P.M. SESSION

8
9 THE COURT: GOOD AFTERNOON, LADIES AND GENTLEMEN.

10 PEOPLE IN COURTROOM: GOOD AFTERNOON.

11 THE COURT: IN THE VULCAN MATERIALS CONSOLIDATED
12 COVERAGE LITIGATION WE'LL RUN THROUGH THE AGENDA. AND IF
13 ANYONE ELSE HAS ANY NEW ITEMS, WE'LL TAKE THEM UP.

14 ON THE OPERATIVE PLEADINGS, WHO WANTS TO RESPOND
15 TO MY COMMENTS ABOUT THIS? IS THERE ANY PROBLEM WITH THE
16 TIMING OF THE FILING OF VULCAN'S CROSS COMPLAINT AND THE
17 AMENDED COMPLAINT?

18 MR. BROWN: DONALD BROWN FOR VULCAN.

19 NO, THAT'S FINE.

20 THE COURT: WHAT ABOUT SOME KIND OF A CONSOLIDATED
21 COMPLAINT? IS THAT PRACTICAL OR IT'S NOT PRACTICAL YET?

22 MR. BROWN: I'M NOT ENTIRELY CONCERNED WHAT THE CAUSE
23 OF ACTIONS ARE GOING BE TO. BUT ONCE IT IS FILED, WE CAN
24 TALK ABOUT IT AND I CAN TALK TO MY CLIENT ABOUT IT.

25 THE COURT: ALL RIGHT.

26 MR. ELLISON?

27 MR. ELLISON: ONE WAY TO PROCEED ON THAT. I JUST GAVE
28 MR. BROWN A SAMPLE OF THE MASTER PLEADING WE USED IN

1 ANOTHER CASE.

2 ONE OPTION MIGHT BE TO CIRCULATE A COPY OF THE
3 DRAFT OF THE CROSS-COMPLAINT. AND IT MIGHT MAKE SENSE TO
4 PUT TOGETHER A MASTER PLEADING OF IT. IT MAY OR MAY NOT
5 WORK HERE. THERE'S NOT AS MANY PARTIES AND THERE'S NOT AS
6 MANY SITES INVOLVED, BUT IT MIGHT MAKE SENSE IF WE CAN COME
7 UP WITH A MASTER PLEADING SO THE NEW PARTIES CAN ALSO HAVE
8 A CHANCE OF USING IT.

9 THE COURT: WELL, I'M NOT SURE THAT I'D LIKE TO SEE
10 THAT AS THE TEMPLATE, BUT MAYBE RATHER THAN INSISTING THAT
11 THESE AMENDED PLEADINGS BE FILED, I SHOULD ASK THAT THEY BE
12 CIRCULATED AND MAYBE SERVED FOR COMMENT.

13 AND, YOU KNOW, MY GOAL HERE IS TO HAVE AS FEW
14 ROUNDS OF AMENDED PLEADINGS AS POSSIBLE, AND IF SOMEBODY
15 GIVES YOU SOME GOOD IDEAS TO WHAT YOU ARE PROPOSING, WE
16 MIGHT COME UP WITH A BETTER MOUSETRAP IN THE END. I'M
17 PRETTY OPEN TO THAT.

18 ANYBODY ELSE HAVE ANY IDEAS ON THAT?

19 MR. WONG: YOUR HONOR, GOOD AFTERNOON RAY WONG ON
20 BEHALF OF TRANSPORT INSURANCE COMPANY.

21 I THINK THE COURT'S LAST SUGGESTION IS AN
22 EXCELLENT ONE, TO THE EXTENT THAT ANY OF THE PARTIES ARE
23 INTERESTED IN AMENDED PLEADINGS TO CIRCULATE THOSE. ONE OF
24 THE ISSUES THAT I SEE AS TO A MASTER COMPLAINT, IS WE HAVE
25 A LITTLE BIT OF A MISALIGNMENT OF PARTIES HERE, SINCE
26 VULCAN IS NOT A PLAINTIFF. WE ARE THE PLAINTIFFS AND SO IF
27 WE CIRCULATE THESE DRAFTS, WE WOULD HAVE AN OPPORTUNITY TO
28 TAKE A LOOK AT THEM, MEET AND CONFER, AND THEN PERHAPS THAT

1 MIGHT LEAD TO A MASTER PLEADING THAT WOULD MAKE SOME SENSE.

2 THE COURT: WHAT DO YOU THINK ABOUT THAT, MR. BROWN?

3 MR. BROWN: I CAN'T DO THAT. I KNOW MY CLIENT IS NOT
4 GOING TO LET ME CIRCULATE THIS PLEADING IN DRAFT FORM, AND
5 IT'S IN GREAT MEASURE, BECAUSE SOME OF THE PEOPLE WHO ARE
6 GOING TO SUE WHO AREN'T HERE YET.

7 THE COURT: ARE WE BRINGING IN A NUMBER OF OTHER
8 INSURANCE CARRIERS, OR ARE THERE NON-INSURER
9 CROSS-DEFENDANTS THAT YOU ARE PROPOSING TO BRING IN?

10 MR. BROWN: BOTH.

11 THE COURT: I GUESS I'D LIKE TO SEE THAT BECAUSE, AS A
12 PRACTICAL MATTER, IT MAY NOT BE THE MOST EFFICIENT APPROACH
13 TO THE CASE, IN TERMS OF COMBINING NON-INSURANCE-RELATED
14 INDEMNITY CLAIMS THAT YOU MAY HAVE AGAINST OTHER THIRD
15 PARTIES. I MEAN, WE MAY WANT TO SEVER THOSE OUT. THEY ARE
16 TREATED DIFFERENTLY. THEY ARE DIFFERENT ISSUES. AND I
17 HAVEN'T REALLY THOUGHT THIS THROUGH. AND I'M SURE NONE OF
18 THE OTHERS HERE HAVE EITHER, BUT I WANT TO KEEP IT ORDERED,
19 IF WE CAN.

20 WHAT IS THE PROBLEM WITH CIRCULATING A PROPOSED
21 CROSS-COMPLAINT? IS THERE SOME SECRET? IF IT'S GOING TO
22 LEAD TO MULTIPLE ROUNDS OF PLEADING CHALLENGES, WE'RE NOT
23 DOING ANYBODY ANY FAVORS.

24 MR. BROWN: IT IS A SECRET, IN A WAY, BUT I SAY THAT
25 WITH A SMALL SMILE. WE'RE GOING TO BRING IN ADDITIONAL
26 INSURERS FROM SOME OTHER YEARS, AND MAYBE AT DIFFERENT
27 LEVELS. THE ONLY NON-INSURER WE'RE CONTEMPLATING SUING IS
28 RR STREET, THE FOLKS WHO HAVE SUED US IN ILLINOIS.

1 THE COURT: AND RR STREET HAS SUED YOU FOR SOME FORM OF
2 INDEMNITY IN ILLINOIS?

3 MR. BROWN: YES.

4 THE COURT: ON AN EXPRESS INDEMNITY CLAIM OR IMPLIED?

5 MR. BROWN: BOTH. THEY WERE A DISTRIBUTOR. IN 1992
6 THEY BECAME A WRITTEN SALES AGENT. AND THERE'S A WRITTEN
7 SALES INDEMNITY CLAUSE.

8 THE LAWSUIT IN ILLINOIS IS FILED BY RR STREET AS
9 WELL AS ITS OWN INSURER, NATIONAL UNION, WHICH I'M
10 INFORMED, AND BELIEVE, HAS PAID MOST OF RR STREET'S COSTS
11 OF DEFENSE IN THE MODESTO LITIGATION. SO NATIONAL UNION IS
12 SUING US THERE AS WELL.

13 THE COURT: HAVE YOU HAD ANY DISCUSSIONS WITH THEIR --
14 THE OTHER THING THAT I WOULD LIKE TO SEE US TRY TO DO, AND
15 MAYBE IT MAY BE IMPRACTICAL, BECAUSE PEOPLE JUST WON'T
16 COOPERATE, BUT ALL OF THIS COVERAGE LITIGATION OUGHT TO BE
17 CENTRALIZED IN ONE PLACE. SO IF WE EVER GET TO THE POINT
18 WHERE WE CAN SIT DOWN AND LOOK AT WHAT THE REAL ISSUES ARE,
19 OR WHAT THE EXPOSURE IS, OR SOME POTENTIAL FOR RESOLUTION,
20 YOU HAVE ALL OF THE PLAYERS THERE. WE GOT RID OF THE ONES
21 IN ARKANSAS OR KENTUCKY.

22 UNIDENTIFIED SPEAKER: ALABAMA.

23 THE COURT: I KNEW IT WAS SOMEWHERE DOWN THERE. AND
24 THAT SEEMS TO BE RESOLVED.

25 NOW, THE ILLINOIS GROUP -- IS RR STREET
26 HEADQUARTERED IN ILLINOIS OR IS IT NATIONAL UNION?

27 MR. BROWN: STREET -- NATIONAL UNION IS IN NEW YORK. I
28 ASSUME NATIONAL UNION IS ALREADY A PARTY IN THIS.

1 THE COURT: BUT STREET ISN'T?

2 MR. BROWN: NO.

3 THE COURT: AND IS NATIONAL UNION'S INVOLVEMENT IN THIS
4 ON THE VULCAN CLAIM, OR IT THE INSURER'S CLAIM, OR BOTH?

5 MS. BAKER: I REPRESENT NATIONAL UNION, YOUR HONOR.
6 I'M KAREN BAKER.

7 WE ARE IN AS VULCAN'S INSURER. NATIONAL UNION
8 ALSO ISSUED POLICIES TO RR STREET.

9 THE COURT: SO YOUR STREET POLICIES ARE NOT AT ISSUE IN
10 THIS LITIGATION?

11 MS. BAKER: CORRECT.

12 THE COURT: WHAT DO YOU THINK THE LIKELIHOOD IS THAT
13 NATIONAL UNION AND PERHAPS YOUR INSURED, RR STREET, WOULD
14 BE WILLING TO CONSOLIDATE AND HAVE THE LITIGATION HERE?

15 MS. BAKER: I'M GOING TO GUESS SLIM TO NONE.

16 THE COURT: OKAY.

17 MS. BAKER: I DON'T REPRESENT THEM IN ILLINOIS,
18 OBVIOUSLY, BUT I AM GOING TO ASSUME, BASED ON WHAT THEY'VE
19 SAID, THAT THEY HAVE NO INTEREST IN COMING TO CALIFORNIA.

20 THE COURT: WOULD YOU TELL ME YOUR NAME, AGAIN?

21 MS. BAKER: KAREN BAKER.

22 THE COURT: OKAY, MS. BAKER.

23 ALL RIGHT. AND WHAT IS THE SUBSTANCE OF THE
24 PROPOSED AMENDMENT TO THE INSURER'S COMPLAINT?

25 MR. ELLISON: YOUR HONOR, WELL, I CAN ONLY SPEAK AS
26 TO -- FIRST, I THINK THE AMENDMENT WOULD BE INCLUDING SOME
27 ADDITIONAL UNDERLYING LITIGATION AND CLAIMS THAT HAVE BEEN
28 FILED SINCE THE FILING OF THE ORIGINAL COMPLAINT, WHICH

1 FALL INTO TWO CATEGORIES; SOME ADDITIONAL PROPERTY DAMAGE
2 CLAIMS, AND ALSO NOW THERE ARE SOME BODILY INJURY CLAIMS
3 OUT THERE. SO I THINK THAT WOULD BE INCLUDING ALL OF
4 THOSE. SO AGAIN, WE HAVE EVERYTHING IN ONE LITIGATION.

5 THE COURT: WELL, MAYBE WE'LL JUST GO WITH THE ORIGINAL
6 PLAN. WE'LL GET THESE GET FILED. I'M GOING TO STAY ANY
7 RESPONSIVE PLEADINGS UNTIL WE HAVE A CHANCE TO LOOK AT
8 THEM.

9 YOU CAN -- MR. BROWN, HAVE A FILED AMENDED
10 COMPLAINT. THE INSURERS CAN HAVE A FILED AMENDED COMPLAINT
11 BUT I CAN TELL YOU, FROM MY PERSPECTIVE I'M GOING TO LOOK
12 AT THEM AS A VETTING PROCESS, AND WE'LL GET THEM ON THE
13 TABLE AND GET PEOPLE'S INPUT ABOUT HOW BEST TO APPROACH
14 THOSE COMPLAINTS, WHETHER THEY ARE CHALLENGES TO THE
15 SUBSTANTIVE OR PROCEDURAL ASPECTS OF THE COMPLAINT, OR THE
16 ALLEGATIONS, AND THEN WE'LL DECIDE WHERE WE GO FROM THERE.

17 MR. BROWN: ALL RIGHT.

18 MR. ELLISON: IF I COULD, JUST ON THE DEADLINE, ONE
19 THING I JUST NOTICED IN MY CALENDAR. IS IT POSSIBLE TO
20 PUSH IT BACK A WEEK? OBVIOUSLY PEOPLE CAN FILE THEM
21 EARLIER, BUT IF WE CAN PUSH THE DEADLINE BACK, IT WILL MAKE
22 MY LIFE A LITTLE EASIER.

23 THE COURT: EVERYTHING IS POSSIBLE HERE. ACTUALLY
24 MARCH 28TH IS SOME KIND OF A HOLIDAY. I NEVER KNOW. WE
25 GET SO MANY HOLIDAYS. WE'D BE LOOKING AT APRIL 4TH THEN.

26 MR. ELLISON: THAT WOULD BE FINE.

27 THE COURT: AND THE MINUTE ORDER WILL INDICATE THAT
28 FIRST STATE AND VULCAN ARE AUTHORIZED TO FILE THESE OR ARE

1 GRANTED LEAVE TO FILE AMENDED PLEADINGS.

2 MR WONG: AND, YOUR HONOR, ALSO, TRANSPORT HAS A
3 COMPLAINT ON FILE.

4 THE COURT: DO YOU SEEK TO AMEND YOURS AS WELL?

5 MR. WONG: WE WOULD RESERVE THAT.

6 THE COURT: BUT YOU ARE NOT GOING TO DO IT NOW. YOU
7 ARE GOING TO WAIT AND SEE WHAT MR. ELLISON'S LOOKS LIKE, OR
8 DO YOU WANT TO FILE -- YOU SEE WHAT MY CONCERN IS. THE
9 INSURERS' COMPLAINTS BASICALLY ARE PLACING AN ISSUE OF
10 COVERAGE FOR A NUMBER OF DIFFERENT LOSSES AND TRYING TO
11 INVOLVE AS MANY OF THE INSURERS WHO ARE POTENTIALLY EXPOSED
12 TO THE LOSSES AS POSSIBLE.

13 IT WOULD MAKE MORE SENSE TO ME TO HAVE A SINGLE
14 INSURER COMPLAINT, CONSOLIDATE A MASTER COMPLAINT OF SOME
15 KIND ON THE COVERAGE ISSUES. VULCAN'S ISSUES ARE, TO SOME
16 DEGREE, OVERLAPPING, BUT WE CAN DEAL WITH THAT. AND THEY
17 HAVE SOME OTHER ISSUES, IN TERMS OF THE INDEMNITY CLAIMS
18 AGAINST THIRD PARTY NON-INSURERS, SO WE CAN LET THEM FILE
19 THEIR CROSS-COMPLAINT AND SEE HOW WE WANT TO APPROACH IT.
20 BUT TO HAVE MULTIPLE COMPLAINTS OR AMENDED PLEADINGS BY
21 VARIOUS INSURERS THAT PLACE AN ISSUE -- MORE OR LESS, THE
22 SAME ISSUES DOESN'T MAKE MUCH SENSE TO ME.

23 MR. WONG: YOUR HONOR, WE CERTAINLY, SPEAKING FOR
24 TRANSPORT, OBVIOUSLY, WE WOULD HAVE NO OBJECTION WORKING
25 WITH MR. ELLISON, OR INDEED ANY OF THE OTHER INSURERS WITH
26 REGARD TO, IN ESSENCE, I GUESS A MASTER COMPLAINT ON BEHALF
27 OF INSURERS.

28 THE COURT: WHY DON'T YOU TALK WITH ONE ANOTHER. IF

1 NOTHING ELSE, TRANSPORT MIGHT JOIN AS A PLAINTIFF ON THE
2 AMENDED COMPLAINT FILING PROPOSED TO BE FILED BY FIRST
3 STATE, IF YOU REALLY WANT TO BE IN A PLAINTIFF'S POSITION.

4 BUT TALK ABOUT IT. AND IF YOU ARE MAKING PROGRESS
5 AND FEEL THAT THE DEADLINE MIGHT IMPEDE THAT PROGRESS, PUT
6 UP A POSTING AND LET ME KNOW WHAT'S GOING ON AND I'LL
7 EXTEND THE DATE FOR THE FILING OF THE INSURERS' AMENDED
8 COMPLAINT.

9 MR. BROWN, YOU ARE READY TO GO AND YOU WANT YOURS
10 ON FILE, SO WE PROBABLY DON'T HAVE ANY ISSUE THERE, AND WE
11 CAN'T WAIT TO LEARN YOUR SECRETS. WE CAN'T PUT THAT OFF.

12 MR. BROWN: I KNOW. EVERYONE IS ON THE EDGE OF THEIR
13 SEATS.

14 THE COURT: LET'S APPROACH IT THAT WAY AND SEE WHERE WE
15 COME OUT.

16 ANYTHING ELSE ON THE AMENDED PLEADINGS? AND THEN
17 I PUT IN THERE, IN LIEU OF HAVING MULTIPLE CHALLENGES TO
18 COMPLAINTS AND AMENDED COMPLAINTS AND THINGS, I HAVE BEEN
19 SUCCESSFUL IN PREVAILING ON DEFENDANTS TO ANSWER AND RAISE
20 AS AFFIRMATIVE DEFENSES MATTERS THAT THEY MIGHT OTHERWISE
21 RAISE AS DEMURRERS OR MOTIONS TO STRIKE. AND IT ALLOWS --
22 AND I COMMIT TO EARLY BRIEFING OF SIGNIFICANT AFFIRMATIVE
23 DEFENSES OR DEFENSES THAT MIGHT OTHERWISE BE THE SUBJECT OF
24 A DEMURRER. IT PERMITS FOCUSED AND, I THINK, NEATLY
25 PACKAGED BRIEFING OF ISSUES OF LAW THAT OFTEN IN THESE
26 CASES PEOPLE SEEM TO WANT TO TAKE UP TO THE COURT OF APPEAL
27 AFTER I'VE HAD MY HANDS ALL OVER THEM. SO IT'S MORE
28 PRACTICAL IF WE JUST HAVE DEMURRERS OR MOTIONS TO STRIKE.

1 ALL IT CAN DO, AT BEST, IS LEAD TO TWO OR THREE ROUNDS OF
2 DEFINITIVE RULING THAT YOU MIGHT BE ABLE TO TEST. AND SO I
3 WOULD CONSIDER THAT, MAYBE IN THE BACK OF YOUR MINDS, SO
4 WHEN WE GET TO THE POINT THAT I'M GOING TO AUTHORIZE
5 RESPONSIVE PLEADINGS, YOU CAN TELL ME IF YOU HAVE STRONG
6 OPPOSITION TO THAT APPROACH, OR WHAT OTHER APPROACH WE CAN
7 TAKE.

8 THE OTHER THING IS SOME COLLECTIVE BRIEFING OF
9 SIGNIFICANT ISSUES. I MEAN A SINGLE ISSUE DEMURRER OR A
10 SINGLE ISSUE MOTION TO STRIKE THAT RAISES SOME KEY ISSUE OF
11 LAW DOESN'T OFFEND ME. I JUST DON'T WANT THESE OMNIBUS
12 CHALLENGES THAT HAVE EVERYTHING IN THEM. SO NO MATTER WHAT
13 I DO WE HAVE TO GRANT LEAVE TO AMEND AND WE HAVE TO KEEP
14 GOING AROUND IN CIRCLES. ALL RIGHT?

15 ANYTHING ELSE ON THE PLEADING ISSUES?

16 ON THE PROTECTIVE ORDER, ARE YOU MAKING ANY
17 PROGRESS?

18 MR. ELLISON: I THINK THAT BALL IS FIRMLY IN MY COURT,
19 YOUR HONOR.

20 I HAD AN ASSOCIATE PUT TOGETHER A DRAFT PROTECTIVE
21 ORDER AND WE HAVEN'T HAD TIME TO FINISH IT. SO WE SHOULD
22 BE ABLE TO GET IT OUT WITHIN THE NEXT WEEK OR SO, AFTER
23 THAT THEY WILL NEED A PERIOD OF TIME FOR THEM TO LOOK AT
24 IT.

25 THE COURT: CAN WE HAVE SOME KIND OF A DEADLINE FOR YOU
26 GETTING A STIPULATION AND A PROPOSED ORDER FOR THE COURT TO
27 ENTER?

28 MR. ELLISON: ABSOLUTELY.

1 THE COURT: THE ONE THING I WANT TO WARN YOU ALL ON,
2 AND I DO THIS WITH EVERYBODY AND IT STILL DOESN'T DO ANY
3 GOOD SOMETIMES. YOU MAY NOT HAVE A PROTECTIVE ORDER THAT
4 COVERS THE FILING OF CONFIDENTIAL INFORMATION WITHOUT
5 COMPLIANCE WITH 2.550, ET SEC. AND I WON'T ENTER THAT KIND
6 OF AN ORDER, SO MAKE SURE YOU ADDRESS IT. ANYTHING THAT
7 HAS BEEN MARKED CONFIDENTIAL THAT'S OFFERED FOR FILING IN
8 ANY PROCEEDING OTHER THAN DISCOVERY PROCEEDINGS MUST BE
9 OFFERED IN COMPLIANCE WITH THE RULES OF COURT; THAT MEANS A
10 REDACTED COPY FOR PLACEMENT IN THE COURT FILE, A SEALED
11 COPY TO BE HELD BY COURT, AND GENERALLY A 10-DAY PERIOD FOR
12 A MOTION TO BE FILED.

13 AND IF NO MOTION IS FILED, THE UNREDACTED COPIES
14 GO IN THE COURT FILE. EVERYBODY KNOWS THE PROCEDURE, BUT A
15 LOT OF PEOPLE DON'T WANT TO ACCEPT IT. AND, SO, BUT THAT'S
16 JUST WHAT WE HAVE TO DO HERE. ALL RIGHT?

17 WELL, WHAT KIND OF A TIMETABLE? YOU CAN FILE THE
18 STIPULATION AND PROPOSED ORDER, OR A JOINT STATEMENT
19 TELLING ME WHAT THE PROBLEMS ARE AND GIVE ME YOUR
20 RESPECTIVE VERSIONS. USUALLY THE THREAT OF MY TAKING YOUR
21 RESPECTIVE VERSIONS AND JUST ENTERING A PROTECTIVE ORDER IS
22 ENOUGH TO ENCOURAGE A STIPULATION, BUT I'LL DO IT EITHER
23 WAY YOU WANT BECAUSE I'LL JUST TAKE YOUR ORDERS AND LOOK AT
24 THEM AND TELL YOU WHAT I THINK IS APPROPRIATE. AND I'LL
25 ENTER A PROTECTIVE ORDER BECAUSE I THINK WE NEED IT TO
26 FACILITATE THE DISCOVERY AND THE EXCHANGE OF INFORMATION.

27 MR. ELLISON: HOW ABOUT I'LL EXCHANGE OURS WITHIN SEVEN
28 DAYS AND WE'LL GIVE YOU A STATEMENT, OR A STIPULATED

1 PROTECTIVE ORDER WITHIN 30 DAYS FROM TODAY, OR SOMETHING
2 LIKE THAT?

3 MS. FENG: WENDY FENG FOR VULCAN, YOUR HONOR. THAT
4 SOUNDS FINE.

5 THE COURT: OKAY. SO A STIPULATION OR JOINT STATEMENT
6 WITH YOUR RESPECTIVE PROPOSED ORDERS, IF YOU HAVEN'T AGREED
7 ON ANYTHING, IS TO BE FILED BY APRIL 11.

8 AND THE OTHER THING IS IF YOU WIND UP FILING A
9 JOINT STATEMENT WITH PROPOSED VERSIONS, I'D ASK THAT YOU
10 E-MAIL WORD COPIES OF EACH VERSION TO MR. RULLY SO I HAVE
11 THEM AVAILABLE.

12 ALL RIGHT. ON THE DISCOVERY ISSUES, WHO WANTS TO
13 GIVE ME THE ANSWERS TO THE QUESTIONS THAT I HAVE?

14 MR. ELLISON: I CAN TRY.

15 ON THE POLICY REPOSITORY, WHAT WE'VE BEEN WORKING
16 ON IS THERE'S BEEN A CHANGE IN THE SOFTWARE WHICH I THINK
17 WILL MAKE IT MORE SEARCHABLE. AND WE RECENTLY CAME UP WITH
18 A DRAFT POLICY COVER SHEET, WHICH IS GOING TO HAVE THE
19 INFORMATION FOR THE VENDOR TO PUT INTO THE DATABASE. WE
20 CIRCULATED THAT, AND IT WILL TAKE SOME TIME FOR PEOPLE TO
21 GIVE US COMMENTS.

22 THE NEXT STEP -- I TALKED, IN GENERAL, TO THE
23 INSURER AND MS. FENG YESTERDAY ABOUT IT. I THINK THE MOST
24 EFFICIENT WAY TO WRAP THAT UP IS TO HAVE INSURERS DO COVER
25 SHEETS -- CORRECT ME IF I'VE GOT THE TIMING WRONG -- I
26 THINK A 30-DAY PERIOD FOR THAT TO OCCUR IS SUFFICIENT. AND
27 THEN ANOTHER 30-DAY PERIOD FOR THE PARTIES TO GET WHATEVER
28 IT IS IN TO THE VENDOR.

1 THE COURT: AND THE COVER SHEETS WILL JUST ACCOMPANY
2 THE DOCUMENTS AND THE STIPS THAT ARE A SUMMARY.

3 MR. ELLISON: FOR THE PURPOSES OF THE VENDOR. SO THE
4 VENDOR WILL PUT IT INTO A SERIES OF CATEGORIES WHICH
5 INCLUDE THE POLICY LIMITS, YEARS OF COVERAGE, NAMES,
6 INSUREDS, A FEW THINGS LIKE THAT. SO IT'S AN EASY WAY TO
7 MAKE SURE THERE ARE NO ERRORS. SO THE VENDOR CAN INPUT THE
8 INFORMATION SO THE RECORDS IN THE DATABASE WILL BE LINKED
9 TO THE ACTUAL IMAGES OF THE POLICY.

10 THE COURT: IS IT FAIR IF MY NOTES SAY YOU SHOULD BE
11 ABLE TO FINALIZE ALL THIS WITHIN 60 DAYS?

12 MR. ELLISON: I THINK WE CAN GET EVERYTHING TO THE
13 VENDOR IN 60 DAYS.

14 THE COURT: I THOUGHT YOU SAID THEY HAVE EVERYTHING
15 EXCEPT COVER SHEETS?

16 MR. ELLISON: RIGHT. SO I THINK WE CAN GET THE COVER
17 SHEETS TO THE VENDOR WITHIN 60 DAYS. I DON'T KNOW HOW LONG
18 IT WOULD TAKE THEM TO GET THAT INFORMATION, BUT IT'S NOT
19 THAT BIG OF A DEAL.

20 THE COURT: OKAY. SO IS 60 DAYS -- YOU ARE THROWING
21 OUT TWO NUMBERS AND I'M A LITTLE SLOW.

22 MR. ELLISON: 60 DAYS FOR PARTIES TO GET THE
23 INFORMATION TO THE VENDOR.

24 THE COURT: AND 30 DAYS FROM THEN TO FINALIZE THEM.

25 MR. ELLISON: EXACTLY.

26 THE COURT: ALL RIGHT. AND I GUESS AS FAR AS THE COURT
27 HAVING ACCESS TO THE DEPOSITORY IT MEANS NOTHING UNTIL WE
28 HAVE THE DEPOSITORY FINALIZED. AND THAT'S GOING TO BE

1 ANOTHER 60 OR 90 DAYS.

2 MR. ELLISON: RIGHT.

3 THE COURT: ALL RIGHT.

4 ON THE THRESHOLD ISSUES, WE CAN TAKE THEM ONE AT A
5 TIME. ON THE EXHAUSTION AND IMPAIRMENT ISSUES, IS ANYBODY
6 INVOLVED IN THAT OTHER THAN TRANSPORT AND VULCAN?

7 IS THAT YOU, MR. WONG?

8 MR. WONG: ON BEHALF OF TRANSPORT, YOUR HONOR, WE ARE
9 INVOLVED WITH REGARD TO IMPAIRMENT ISSUES. WE DON'T TAKE A
10 POSITION THAT THERE IS ANY POLICY THAT'S BEEN EXHAUSTED,
11 BUT THERE IS CERTAINLY IMPAIRMENT WITH REGARD TO A NUMBER
12 OF POLICIES.

13 I HAVE A SUGGESTION, IN TERMS OF HOW WE COULD
14 PROCEED WITH REGARD TO TRANSPORT. AND THAT IS, I WOULD
15 THINK IT WOULD MAKE SENSE FOR US TO MEET AND CONFER WITH
16 COUNSEL FOR VULCAN AND SHARE WITH THEM OUR METHODOLOGY WITH
17 REGARD TO WHAT WE SEE IN TERMS OF THE IMPAIRMENT AND SO
18 FORTH; GET THEIR REACTION, AND THEN WE CAN REPORT BACK TO
19 THE COURT.

20 THE COURT: AND HOW MUCH TIME -- CAN YOU DO THAT IN
21 THE -- BEFORE THE NEXT STATUS CONFERENCE WHICH WOULD BE IN
22 THE NEXT SIX WEEKS OR SO?

23 MR. WONG: CERTAINLY NOT A PROBLEM AS FAR AS WE'RE
24 CONCERNED, YOUR HONOR.

25 THE COURT: ALL RIGHT.

26 ON THE PUNITIVE DAMAGES ISSUE, AGAIN, I KNOW
27 PEOPLE WANTED TO PUT IT ON THE TABLE SOMETIME AGO. IT JUST
28 DOESN'T MAKE MUCH SENSE TO ME AT THIS JUNCTURE, IT'S GOING

1 TO BE OUT THERE FOR A LONG TIME, BUT I'M NOT SURE IT'S
2 REALLY GOING TO SOLVE ANY PROBLEMS.

3 WAS THERE ANY APPORTIONMENT OF THE SETTLEMENT IN
4 THE UNDERLYING MODESTO LITIGATION?

5 MR. BROWN: YES. THE SETTLEMENT EXPLICITLY SAYS THAT
6 NONE OF IT IS FOR PUNITIVE DAMAGES. AND THE PLAINTIFFS
7 WITHDREW THEIR PUNITIVE DAMAGES CLAIM.

8 AND PERHAPS MORE SIGNIFICANTLY, THE JUDGE IN THE
9 CASE IS TREATING THE ENTIRE SETTLEMENT AMOUNT AS OFFSETS TO
10 COMPENSATORY DAMAGES THAT MAY BE AWARDED AGAINST THE
11 REMAINING DEFENDANTS.

12 MR. WONG: YOUR HONOR, THIS MAY LEND ITSELF TO A
13 THRESHOLD ISSUE BECAUSE WE UNDERSTAND THAT IT IS VULCAN'S
14 POSITION. ON BEHALF OF TRANSPORT WE CERTAINLY TAKE A
15 CONTRARY POSITION AND THAT IS THERE'S NO QUESTION THAT
16 THERE WERE FOUR SITES THAT WERE IN THE INITIAL TRIAL AND
17 THE UNDERLYING CASE. THERE'S NO DOUBT THAT THERE WAS A
18 PUNITIVE DAMAGE VERDICT THAT WAS RENDERED AGAINST VULCAN
19 AND THAT PROCEEDED. THERE WAS A REDUCTION OF THAT VERDICT
20 AND SO FORTH. THOSE FACTS CAN BE ESTABLISHED.

21 NOW VULCAN IS TAKING THE POSITION THAT GIVEN SOME
22 AWARDINGS THAT OCCURRED IN THEIR SETTLEMENT AGREEMENT, AND
23 TO WHICH TRANSPORT -- AND TO MY KNOWLEDGE, NONE OF THE
24 OTHER INSURERS WERE A PARTY, THAT SOMEHOW WE'RE BOUND BY
25 THE WORDINGS THAT THEY AGREED TO WITH THE PLAINTIFF, AND
26 THAT JUDGE MUNTER IN THE UNDERLYING CASE MAY HAVE ENDORSED;
27 THAT'S AN ISSUE WE SHOULD PRESENT TO THIS COURT AS TO
28 WHETHER THEY CAN, IN OUR VIEW, LOAD UP THAT SETTLEMENT

1 AGREEMENT WITH WHAT WE REGARD TO BE PRETTY SELF-SERVING
2 PROVISIONS AND BIND US TO THOSE PROVISIONS.

3 AND SO THERE'S NO DOUBT ON BEHALF OF TRANSPORT
4 THAT WE THINK THERE SHOULD BE SOME SORT OF ALLOCATION OR
5 CONSIDERATION OF THE SETTLEMENT BEING DRIVEN BY PUNITIVE
6 DAMAGE EXPOSURE WHICH WE WOULD CONTEND, AND THIS WAS THE
7 MOTION THAT WE FILED, UNDER CALIFORNIA LAW IT SIMPLY IS NOT
8 COVERED.

9 THE COURT: OKAY. BUT -- WELL, I MEAN, I DON'T
10 NECESSARILY DISAGREE THAT THE INSURERS MAY HAVE A DOG IN
11 THE FIGHT. THE QUESTION IS -- I GUESS HOW BEST TO PUT THAT
12 ON THE TABLE. AND JUST HOW MUCH CONTROL YOU HAVE OVER THE
13 RESOLUTION OF THE CLAIM. I MEAN, THEY'VE MADE THEIR DEAL
14 IN THE MODESTO LITIGATION, JUDGE MUNTER HAS APPARENTLY
15 ENDORSED THE DEAL, OR APPROVED IT; IS THAT CORRECT?

16 MR. BROWN: YES, BUT MY POINT WAS NOT HE JUST APPROVED
17 IT. HE'S GONE BEYOND THAT AND ENTERED AN ORDER THAT
18 ALLOCATES THE SETTLEMENT FUNDS. THE SUM IS ALLOCATED TO
19 ATTORNEY'S FEES. BUT HE ALLOCATES THE REMAINDER OF THE
20 SETTLEMENTS FUNDS TO SPECIFIC SITES. AND THOSE AMOUNTS
21 WILL BE OFFSET TO COMPENSATORY DAMAGES CLAIMS THAT MAY
22 PREVAIL AGAINST THE CO-DEFENDANTS.

23 SO IT'S NOT JUST THAT HE SAID THE DEAL IS OKAY
24 WITH ME. THE MONEY IS, IN FACT, BEING USED FOR
25 COMPENSATORY DAMAGES BY COURT ORDER.

26 THE COURT: MR. ELLISON?

27 MR. ELLISON: IF I COULD, YOUR HONOR. JUST SO I'M NOT
28 CONFUSED. I THINK THE ORDER MR. BROWN IS TALKING ABOUT IS

1 JUST A GOOD FAITH SETTLEMENT DETERMINATION. SO I DON'T
2 THINK THERE'S BEEN ANY DETAILED EVIDENTIARY EVALUATION BY
3 THE COURT OR ANYTHING OF THAT SORT, A PRESENTATION OF
4 WITNESSES, OR ANY SORT OF EVIDENCE, TO DETERMINE HOW IT
5 SHOULD BE ESTABLISHED. SO I THINK ALL WE'RE TALKING ABOUT
6 IS A GOOD FAITH SETTLEMENT DETERMINATION.

7 I THINK WHAT THIS HIGHLIGHTS IS AN IDEAL ISSUE FOR
8 THRESHOLD MOTION DETERMINATION BECAUSE THE QUESTION IS JUST
9 THE IMPACT THAT THE LANGUAGE IN THAT SETTLEMENT AGREEMENT
10 AND THE GOOD FAITH ORDER THAT INCORPORATES THE SETTLEMENT
11 AGREEMENT MIGHT HAVE ON THE ALLOCATION WITH RESPECT TO THE
12 VARIOUS INSURANCE POLICIES AT ISSUE. SO I THINK THAT'S A,
13 PRETTY MUCH AN IDEAL ISSUE FOR THRESHOLD DETERMINATION
14 BECAUSE IT COULD HAVE A SUBSTANTIAL IMPACT IN THIS CASE.

15 THE COURT: WAS IT AN 877.6 ORDER THAT YOU ARE
16 REFERRING TO?

17 MR. BROWN: YES, WITH AN ALLOCATION THAT WAS CHALLENGED
18 AND OVERRULED.

19 THE COURT: ALL RIGHT. WERE ANY OF THE PARTIES THAT
20 WERE IN THIS LITIGATION IN THERE CHALLENGING IT? THEY
21 WEREN'T, WERE THEY?

22 MR. BROWN: CORRECT.

23 THE COURT: OKAY. THERE'S A COUPLE OF ISSUES HERE, IT
24 SEEMS LIKE. AND AGAIN, I HAVEN'T REALLY THOUGHT THESE
25 THROUGH AND I'M SURE YOU ALL CAN GIVE ME MORE INPUT TO
26 FOCUS MY THINKING ON IT, BUT THE 877.6 IS MERELY ON AN
27 IMPLIED INDEMNITY CLAIM AND SAYS THAT YOUR SETTLEMENT WILL
28 CUT OFF OTHER CLAIMS AGAINST YOU. AND GENERALLY THERE IS

1 AN APPORTIONMENT THAT APPLIES TO THE SETOFFS THAT REMAINING
2 LITIGANTS MIGHT BE ENTITLED TO FOR THE BENEFIT OF THE
3 SETTLEMENT.

4 THAT SEEMS TO ME TO BE DISTINCT AND SOMEWHAT
5 DIFFERENT FROM CLAIMS BETWEEN AN INSURED AND THEIR
6 INSURANCE COMPANIES ON THE EXPRESS POLICY TERMS AND WHAT
7 RIGHTS AND THINGS THEY MIGHT HAVE UNDER THOSE POLICIES.
8 AND THEN THE OTHER OVERLAY WOULD BE THE MANTRA THAT THE
9 INSURERS KEEP GIVING US ABOUT THE INABILITY TO INSURE FOR
10 PUNITIVE DAMAGES.

11 I'M NOT SAYING THAT THE TWO ASPECTS SEEM A LITTLE
12 BIT DIFFERENT IN CHARACTER AND MAY NOT BE BINDING ONE ON
13 THE OTHER.

14 MR. BROWN: ALL I WAS TRYING TO SAY, AND FOCUSING JUST
15 ON -- THE ONLY ARGUMENT THEY HAVE ABOUT PUNITIVE DAMAGES,
16 THE INSURERS, IS THEY ARE UNINSURABLE AS A MATTER OF
17 CALIFORNIA PUBLIC POLICY. SO THAT'S A DIFFERENT CATEGORY
18 OF ISSUES THAN THE ONE YOU MENTIONED ABOUT WHAT THEIR
19 POLICIES SAY AND DON'T SAY COVER OR DON'T COVER.

20 AND SO THE THRESHOLD QUESTION IS: DOES CALIFORNIA
21 PUBLIC POLICY PROHIBIT INSURED'S COVERAGE FOR THIS
22 SETTLEMENT AND MY ANSWER IS NO, IT DOESN'T, BECAUSE WHAT
23 CALIFORNIA PUBLIC POLICY HOLDS IS THAT IF THERE IS A
24 JUDGMENT ASSESSING PUNITIVE DAMAGES AGAINST SOMEONE FOR THE
25 SAKE OF PUNISHING THEM, CALIFORNIA LAW SAYS THAT PUNISHMENT
26 MUST HAVE ITS STING AND YOU ARE NOT ALLOWED TO HAVE
27 INSURANCE COMPANIES.

28 WE DIDN'T GET THERE. THERE'S NO PUBLIC POLICY

1 AGAINST SETTLEMENT.

2 THE COURT: RIGHT.

3 MR. BROWN: SO THAT'S THE THRESHOLD ARGUMENT. BUT IF
4 THEY SOMEHOW PREVAIL THERE -- ALL I WAS SAYING ABOUT WHAT
5 JUDGE MUNTER HAS DONE IS NOT THAT HE'S SAID THAT'S
6 REASONABLE AND THAT'S BINDING ON THEM. I'M NOT SAYING
7 THAT. I'M SAYING THE MONEY IS ACTUALLY BEING USED FOR
8 COMPENSATORY DAMAGES; THAT IS A FACT. AND THAT TELLS US
9 THAT IT'S NOT PUNITIVE DAMAGES. IT'S NOT AGAINST PUBLIC
10 POLICY TO ALLOW INSURANCE FOR IT. THIS WAS A MAJOR ISSUE
11 COMING IN. IT'S REALLY, FROM MY PERSPECTIVE, A VERY, VERY
12 MINOR ISSUE IN THIS CASE AT THIS POINT. OTHERS DISAGREE,
13 BUT I FIRMLY BELIEVE THAT.

14 MR. WONG: YOUR HONOR?

15 THE COURT: YES.

16 MR. WONG: WE CERTAINLY DISAGREE THAT IT'S A MINOR
17 ISSUE. AND WE UNDERSTAND MR. BROWN'S CHARACTERIZATION OF
18 THE ISSUE, AND THE ARGUMENTS THAT THEY WOULD LIKE TO
19 ADVANCE ON THE MERITS OF THE ISSUE. AND WE SIMPLY HAVE A
20 DIFFERENT VIEW.

21 I MEAN, THE FACT OF THE MATTER IS THAT THERE WAS A
22 PUNITIVE DAMAGE EXPOSURE. THE FACT THAT THEY SETTLED THAT
23 PUNITIVE DAMAGE EXPOSURE LEADS US TO BELIEVE THAT THERE
24 SHOULD BE SOME SORT OF CONSIDERATION AS TO HOW MUCH OF THAT
25 SETTLEMENT SHOULD BE REFLECTIVE OF THE PUNITIVE DAMAGE
EXPOSURE THAT IS NOT INSURABLE.

27 AND AGAIN, THAT'S WHY WE THINK, LIKE MR. ELLISON,
28 THAT LENDS ITSELF TO BEING A THRESHOLD ISSUE FOR

1 CONSIDERATION.

2 THE COURT: OKAY. WHAT I'D LIKE YOU TO DO, AND MY NOTE
3 IS THAT THE PARTIES ARE GOING TO MEET AND CONFER AND
4 ATTEMPT TO DEVELOP A THRESHOLD ISSUE STIPULATION TO PERMIT
5 THE COURT TO ADDRESS THE EFFECT OF THE MODESTO SETTLEMENT
6 AND THE INTERPLAY OF THE POTENTIAL FOR PUNITIVE DAMAGES.

7 GET TOGETHER. EITHER GIVE ME A JOINT STATEMENT,
8 OR IF YOU ARE SUCCESSFUL IN PUTTING THIS ISSUE ON THE TABLE
9 IN A STIPULATION WITH UNDISPUTED FACTS, I'LL GIVE YOU A
10 BRIEFING SCHEDULE ON IT AND WE'LL GET IT TEED UP.

11 AND TO THE EXTENT, MR. BROWN, THAT YOU THINK IT'S
12 A RELATIVELY MINOR ISSUE AND PRETTY MUCH GONE, IT WOULD
13 SEEM TO ME IT WOULD BEHOOVE YOU TO WORK WITH THEM AND SEE
14 IF WE CAN'T GET SUCH A STIPULATION AND GET A DETERMINATION.

15 MR. BROWN: I DON'T MIND DOING THAT. THAT'S FINE.

16 THE COURT: SO LET'S DO THAT AND WE'LL AIM FOR THE NEXT
17 STATUS CONFERENCE TO HAVE SOME REPORT ON THAT IN THE JOINT
18 STATEMENT, OR IDEALLY, A STIPULATION THAT I CAN SET A
19 BRIEFING SCHEDULE ON.

20 ON THE SCOPE OF COVERAGE ISSUE, I'M NOT SURE THAT
21 THIS REQUIRES MUCH OF A COMMENT. I WOULD JUST -- I THINK
22 THE PARTIES SHOULD TRY AND WORK TOGETHER TO GET THIS
23 COVERAGE LITIGATION CONSOLIDATED IN A SINGLE VENUE, TO THE
24 EXTENT POSSIBLE.

25 AND MAYBE YOUR CROSS-COMPLAINT, MR. BROWN, WILL
26 ASSIST OR GIVE US SOME VEHICLE WITH WHICH TO DO THAT. BUT
27 IT JUST DOESN'T MAKE A LOT OF SENSE TO HAVE DETERMINATIONS
28 MADE OF SIMILAR ISSUES IN MULTIPLE JURISDICTIONS THAT CAN

1 ONLY LEAD TO FURTHER CONFUSION.

2 MR. BROWN: THAT'S MY VIEW.

3 THE COURT: AND MS. BAKER HAS TOLD US IT'S NOT LIKELY
4 THAT FIRST STATE AND THEIR INSURER ARE GOING TO COOPERATE.
5 SO MY COMMENT THERE MAY BE FOR NAUGHT.

6 MR. ELLISON: YOUR HONOR, IF I COULD, I THINK THERE'S A
7 TYPOGRAPHIC ERROR. THE REFERENCE IS THAT MY CLIENT IS
8 FIRST STATE, BUT I THINK THE REFERENCE IS TO BE TO RR
9 STREET.

10 THE COURT: THAT'S WHAT I MEANT. I THINK THAT'S WHAT
11 IT WAS. THAT'S MY MISTAKE. THANK YOU.

12 DID RR STREET GET A GOOD FAITH DETERMINATION?

13 MR. BROWN: THE CASE IS STILL PENDING AGAINST RR
14 STREET.

15 THE COURT: OKAY.

16 MR. BROWN: IT'S OUR POSITION THAT 877.6 DOES BAR ALL
17 OF RR STREET'S INDEMNITY CLAIMS AGAINST VULCAN IN THE
18 MODESTO CASES, BUT FOR THE ONE CLAIM THEY DO MAKE, WHICH IS
19 BASED UPON AN EXPRESSED CONTRACTUAL INDEMNITY.

20 BUT THEY'VE MADE IMPLIED INDEMNITY CLAIMS, COMMON
21 LAW INDEMNITY CLAIMS, PROMISSORY ESTOPPEL CLAIMS. THE
22 CALIFORNIA SUPREME COURT HAS MADE IT CLEAR THAT THOSE
23 CLAIMS ARE BARRED. WHY THEY'VE BROUGHT THEM, I HAVE NO
24 IDEA.

25 THE COURT: AND THEY ARE BRINGING THOSE IN ILLINOIS?

26 MR. BROWN: RIGHT. THEY ARE BRINGING THEM IN ILLINOIS.

27 THE COURT: AND YOU ARE GOING TO BRING A
28 CROSS-COMPLAINT, THEORETICALLY PLACING AT ISSUE AT LEAST

1 THE EXPRESS INDEMNITY CLAIMS?

2 MR. BROWN: IF IT DOES ANYTHING IT WILL PLACE AN ISSUE
3 OF THE 877.6 BAR AGAINST THE NON-EXPRESS INDEMNITY CLAIMS.
4 BUT IT WILL PROBABLY GO AS FAR AS YOU SAY AS WELL.

5 THE COURT: I WOULD SAY THAT YOU OUGHT TO PUT -- AT
6 LEAST IT'S PENDING HERE. IF YOU LEAVE IT OUT THERE AND THE
7 ONLY EXPRESS INDEMNITY CLAIM IS IN ILLINOIS, I DON'T THINK
8 YOU ARE REALLY DOING YOURSELF ANY FAVORS.

9 MR. BROWN: RIGHT. I AGREE.

10 THE COURT: ALL RIGHT. AND IS FIRST STATE AN
11 ADDITIONAL INSURED ON ANY OF THE POLICIES HERE?

12 MR. BROWN: SOME, YES. AND SOME OF THE POLICIES ALSO
13 COVER LIABILITIES OF THIRD PARTIES ASSUMED BY VULCAN. SO
14 ON THOSE POLICIES RR STREET MAY NOT BE A NAMED INSURED, AND
15 RR STREET LIABILITY, IF INDEED WE'VE ASSUMED IT BY
16 CONTRACT --

17 THE COURT: THEY HAVE A CONTRACTUAL LIABILITY,
18 ENDORSEMENT, OR WHATEVER THEY HAVE IN THERE THAT SAYS
19 THEY'LL COVER THAT AS WELL.

20 MR. BROWN: BUT YOU ARE RIGHT. STREET IS EXPLICITLY AN
21 ADDITIONAL NAMED INSURED ON SOME OF THE POLICIES.

22 THE COURT: ALL RIGHT. ANYTHING ELSE ON -- I'M JUST
23 TRYING TO GET MY ARMS AROUND THIS. AND I HOPE YOU ALL CAN
24 COME UP WITH SOME APPROACH THAT HELPS US MOVE THIS FORWARD.

25 ON THE ABSOLUTE -- ON THE POLLUTION EXCLUSION
26 ISSUES, THE SUDDEN AND ACCIDENTAL, I DON'T KNOW HOW YOU PUT
27 THAT ON THE TABLE WITHOUT PEOPLE JUMPING UP AND SAYING,
28 "WE'VE GOT TO HAVE ALL SORTS OF SITE-SPECIFIC DISCOVERY,"

1 AND I, FOR ONE, WOULD LIKE TO DEFER THAT OR AVOID IT FOR A
2 WHILE AND SEE IF WE CAN'T NARROW THINGS DOWN WITH WHAT WE
3 CAN WORK WITH WITHOUT A LOT OF DISCOVERY. SO I DON'T SEE
4 THAT AS BEING A PARTICULARLY GOOD THRESHOLD ISSUE.

5 ADJUDICATION OF THE ENFORCEABILITY OF THE ABSOLUTE
6 POLLUTION EXCLUSION, ON THE OTHER HAND, MAY BE A DIFFERENT
7 ISSUE.

8 ANYBODY HAVE ANY THOUGHTS ON THOSE ISSUES?

9 MS. BAKER: I HAVE A COUPLE OF THOUGHTS, YOUR HONOR.

10 I UNDERSTAND YOUR POINT ON THE SUDDEN AND
11 ACCIDENTAL DISCOVERY. WHAT I WOULD SUGGEST THOUGH, AND I
12 HAVE NOT TALKED TO VULCAN ABOUT THIS BECAUSE I WAS TRYING
13 TO THINK OF WAYS TO DO THIS, IS IF WE COULD GET THE
14 DISCOVERY THAT THEY PRODUCED IN THE UNDERLYING CASE.

15 I DON'T THINK THERE SHOULD BE AN OBJECTION TO WHAT
16 THEY'VE ALREADY PRODUCED. THIS CASE HAS BEEN PENDING FOR
17 TWO YEARS AND WE'RE STILL AT THE PLEADING STAGE. AND I
18 KNOW THAT THESE CASES TAKE A LONG TIME, I'VE BEEN DOING
19 THEM AS LONG AS ANYONE ELSE. BUT WE WOULD LIKE -- WE WERE
20 HOPEFUL THAT WE WOULD BE ABLE TO SETTLE THE CASE. IT
21 HASN'T HAPPENED AND IT DOESN'T LOOK LIKELY FOR THE
22 IMMEDIATE FUTURE.

23 WE WOULD LIKE TO START MOVING THE CASE FORWARD ON
24 A DISCOVERY BASIS, WITHOUT PREJUDICING VULCAN AND THE NEW
25 CLAIMS THAT THEY HAVE, OR ANY OTHER POTENTIAL CLAIMS.
26 THEY'VE SETTLED THE MAIN MODESTO ACTION, SO THEY SHOULDN'T
27 HAVE ANY CONSIDERATION ABOUT THAT PARTICULAR CASE.

28 I THINK IF WE COULD GET WHAT THEY'VE ALREADY

1 PRODUCED, THAT WOULD AT LEAST BE A HEAD START FOR US TO SEE
2 WHAT WE MIGHT WANT AND WHAT WE MIGHT BE ABLE TO USE FROM
3 THE UNDERLYING CASE, POTENTIALLY. IF WE COULD AGREE TO
4 THAT I GUESS WE WOULD SERVE THE SAME DISCOVERY OVER AGAIN,
5 BUT I THINK THAT WOULD BE A WASTE OF TIME, PERSONALLY.

6 THE COURT: ALL RIGHT.

7 WHAT'S YOUR VIEW ON THAT? AT ONE POINT,
8 MR. BROWN, WE WERE HEARING THAT YOU CAN'T MAKE ME DO ALL
9 THIS BECAUSE IT'S GOING TO PREJUDICE OUR DEFENSE. THAT
10 ONE, BY YOUR SETTLEMENT, SEEMS TO HAVE GONE OUT THE WINDOW,
11 AT LEAST ON THAT CLAIM.

12 MR. BROWN: I CAN LOOK INTO THIS. I DON'T KNOW WHAT
13 WAS PRODUCED THERE. I DON'T KNOW WHAT PROTECTIVE ORDERS,
14 IF ANY, EXIST WITH RESPECT TO WHAT WAS PRODUCED THERE. I
15 DON'T KNOW IF ANY OTHER PARTY WOULD HAVE A SAY --

16 THE COURT: I WENT TO JUDGES' COLLEGE WITH JUDGE MUNTER
17 SO MAYBE I CAN GIVE HIM A CALL AND WE CAN WORK SOMETHING
18 OUT.

19 MS. BAKER: LIKE I SAID, I'M JUST SPRINGING THIS ON DON
20 RIGHT NOW, AND I DON'T REALLY MEAN TO, BUT I'M TRYING TO
21 THINK OF A WAY TO PROCEED WITHOUT GRINDING OUR WHEELS.

22 THE COURT: ALL RIGHT.

23 MR. BROWN, YOU LOOK INTO IT. AND YOU TALK TO
24 MS. BAKER ABOUT IT. ANYTHING WE CAN DO ON A VOLUNTARY
25 BASIS, IN TERMS OF PUTTING INFORMATION ON THE TABLE SEEMS
26 TO ME TO BE PRODUCTIVE AND I ENCOURAGE YOU TO DO THAT.

27 THE OTHER SIDE OF THE COIN IS I'M NOT INTERESTED
28 IN JUMPING OFF INTO A MAJOR DISCOVERY PHASE IN THIS CASE

1 BECAUSE I THINK THERE ARE SOME PRELIMINARY THINGS THAT WE
2 COULD PUT MORE EFFORT INTO WHICH WOULD HELP TO NARROW THIS
3 DOWN.

4 MS. BAKER: I UNDERSTAND, YOUR HONOR.

5 THE COURT: SO WHATEVER WE DO ON A COOPERATIVE BASIS IS
6 GOOD, AND MAYBE SOME LIMITED AND FOCUSED DISCOVERY MIGHT BE
7 PERMITTED, BUT AS FAR AS OPENING UP THE DISCOVERY GATES,
8 I'M NOT LIKELY TO DO THAT.

9 MR. WONG?

10 MR. WONG: YES, WE WOULD JOIN IN MS. BAKER'S SUGGESTION
11 IN THAT IF IT'S, AS A STARTING POINT, SOLELY THE DISCOVERY
12 THAT WAS PRODUCED IN THE UNDERLYING CASE, HAS ALREADY BEEN
13 PRODUCED. AND THEN JUST A REMINDER THAT ONE OF THE THINGS
14 THAT'S ON MR. ELLISON'S HOMEWORK LIST IS TO GET THE
15 PROTECTIVE ORDER IN PLACE. OBVIOUSLY THAT DISCOVERY, IF IT
16 IS PRODUCED, CAN BE PRODUCED SUBJECT TO ANY APPROPRIATE
17 PROTECTIVE ORDER.

18 THE COURT: I THINK THAT'S A GREAT APPROACH. AND IT'S
19 SOMETHING THAT'S ALREADY OUT AND ON THE TABLE. IT
20 SHOULDN'T BE THAT HARD TO IDENTIFY.

21 WE WILL HAVE TO GET COUNSEL THAT WAS INVOLVED IN
22 THE DEFENSE OF THE UNDERLYING ACTION, THAT'S MR. BROWN'S
23 TASK, TO GO TALK TO THEM, SEE WHAT'S INVOLVED, WHAT'S
24 THERE, WHAT KIND OF PROTECTIVE ORDER IT'S OBJECT TO.

25 I'M MORE THAN HAPPY TO ISSUE SOME COMPANION ORDER
26 THAT WOULD INSURE THE CONTINUING CONFIDENTIALITY SUBJECT TO
27 THE TERMS OF ANY ORDER ISSUED IN THE MODESTO LITIGATION, IF
28 THAT'S NECESSARY.

1 AND YOU MIGHT GET THE PROTECTIVE ORDER THAT WAS
2 ISSUED THERE, GIVE IT TO MR. ELLISON, OR IN YOUR
3 DISCUSSIONS OF ONE TO BE ENTERED HERE, TO SEE WHAT WE CAN
4 DO TO MAKE THEM COMPATIBLE. SO THAT WOULD TAKE AWAY THAT
5 ISSUE.

6 HOW MANY OF THE POLICIES DO WE HAVE THAT HAVE
7 ABSOLUTE POLLUTION EXCLUSIONS IN THEM?

8 MR. BROWN: WELL, IT DEPENDS -- PEOPLE HAVE DIFFERENT
9 IDEAS OF WHAT QUALIFY AS AN ABSOLUTE POLLUTION EXCLUSION.
10 I THINK THE ANSWER IS THREE OR FOUR.

11 THE COURT: AND THAT'S THREE TO FOUR PRIMARY POLICIES
12 OR --

13 MR. BROWN: UPPER LAYER EXCESS.

14 THE COURT: AND THEY ARE NOT FOLLOWING FORM? THEY HAVE
15 SPECIFIC ABSOLUTE POLLUTION EXCLUSIONS IN UPPER LEVEL
16 EXCESS POLICIES HERE?

17 MR. BROWN: AT THIS POINT I'LL TURN IT OVER TO
18 MS. FENG.

19 MS. FENG: I THINK THAT'S RIGHT. WE'VE IDENTIFIED
20 THREE, POSSIBLY FOUR WITH STANDARD POLLUTION EXCLUSION
21 LANGUAGE IN THE EXCESS LAYERS IN 1985.

22 THE COURT: OKAY. MR. WONG?

23 MR. WONG: YOUR HONOR, AGAIN, I'M NOT SURE HOW THEY ARE
24 COUNTING THREE OR FOUR POLICIES. BUT ON BEHALF OF
25 TRANSPORT, WE HAVE A POLICY THAT INCEPTEDE IN 1981 THAT WE
26 CONTEND IS AN ABSOLUTE POLLUTION EXCLUSION POLICY.

27 THE COURT: YES, MA'AM.

28 MS. FENG: YOU ARE RIGHT, YOUR HONOR. THERE MAY BE

1 OTHER POLICIES THAT WE DON'T CONSIDER STANDARD ABSOLUTE
2 POLLUTION EXCLUSION LANGUAGE. I DON'T THINK MR. WONG WOULD
3 DISPUTE THAT HIS LANGUAGE ISN'T WHAT YOU THINK OF AS A
4 STANDARD ABSOLUTE POLLUTION EXCLUSION LANGUAGE.

5 THE COURT: I GUESS FROM MY PERSPECTIVE I LIKE TO SEE
6 SOME ACTION IN THESE CASES THAT SOMETHING IS HAPPENING
7 RATHER THAN JUST MEETING EVERY SIX WEEKS AND TALKING ABOUT
8 WHAT WE MIGHT BE ABLE TO DO.

9 I WOULD WELCOME AN OPPORTUNITY TO PLACE, AT LEAST
10 SAY THE TRANSPORT INDEMNITY A.P.E. ON THE TABLE, IF IT'S AN
11 UNDISPUTED POLICY TERM. AND YOU CAN PUT TOGETHER A
12 STIPULATION BRIEFING THAT ISSUE. AND SOMETIMES JUST MAKING
13 A DECISION ON ONE POLICY WILL HELP US IN INTERPRETING
14 OTHERS OR MOVING FORWARD.

15 IF THAT'S NOT THE BEST POLICY TO PUT AT ISSUE OR
16 THE BEST CLAUSE, FROM VULCAN'S PERSPECTIVE, THEN MAYBE WE
17 DO IT ON TWO POLICIES. BUT I DON'T WANT TO BRIEF EVERY
18 POSSIBLE ABSOLUTE POLLUTION EXCLUSION POLICY TERM AND MAKE
19 THAT KIND OF -- IT JUST BECOMES TOO BURDENSOME. IF WE TAKE
20 A COUPLE OF THEM AND PUT THEM ON THE TABLE, IT CAN'T HURT.

21 MR. BROWN: THAT'S FINE. WHAT'S IN THAT TRANSPORT
22 POLICY IS UNIQUE, HOTLY DISPUTED AND ISN'T GOING TO TELL US
23 WHAT TO DO ABOUT ANY OTHER INSURANCE COMPANY. BUT THERE
24 ARE THREE OR FOUR THAT HAVE A STANDARD FORM ABSOLUTE
25 POLLUTION EXCLUSION; THAT TRANSPORT POLICY IS CERTAINLY NOT
26 ONE OF THEM.

27 MR. WONG: BUT, YOUR HONOR, WE WOULD WELCOME THE
28 OPPORTUNITY TO MEET AND CONFER. THIS IS THE FIRST TIME

1 WE'VE HEARD THERE'S A HOT DISPUTE ABOUT THIS WORDING THAT
2 SEEMS PRETTY PLAIN TO US. BUT WE'RE HAPPY TO MEET AND
3 CONFER WITH COUNSEL AND SEE IF THIS IS AN ISSUE THAT WE CAN
4 PRESENT TO THE COURT.

5 THE COURT: YES, MR. ELLISON?

6 MR. ELLISON: JUST ON A PROCEDURAL MATTER. AT PRESENT,
7 THE ONLY CLAIMS THAT HAVE BEEN ASSERTED AGAINST ANY
8 INSURERS, HAVE BEEN SERVED BY MY CLIENT. AND I DON'T THINK
9 IT WAS OUR INTENT TO SUE ANY ABSOLUTE POLLUTION EXCLUSION
10 CARRIERS. PROCEDURALLY, WE MAY WANT TO WAIT UNTIL VULCAN
11 ASSERTS THEIR CLAIMS OR ANY OTHER INSURERS ASSERT THEIR
12 CLAIMS BECAUSE WE'LL BE AMENDING THE COMPLAINT IF PEOPLE
13 HAVE ABSOLUTE POLLUTION EXCLUSION AND IF THEY WANT TO
14 CONTACT ME, I THINK WE JUST DISMISSED ONE.

15 AND SO THE POLICIES AT ISSUE ARE CLEARLY IN FLUX
16 AT THIS POINT. AND I GUESS WE MAY WANT TO SEE IF VULCAN
17 MAINTAINS THAT ANY OF THE ABSOLUTE POLLUTION EXCLUSION
18 POLICIES ACTUALLY PROVIDE COVERAGE.

19 THE COURT: WE'VE GOT A LOT OF CARRIERS HERE AND WHAT
20 ABOUT IF IN TODAY'S ORDER I SAY THAT THE PARTIES ARE TO
21 MEET AND CONFER FOR THE DEVELOPMENT OF A STIPULATION TO
22 TENDER THE ABSOLUTE POLLUTION EXCLUSION ISSUES ON A LIMITED
23 NUMBER OF POLICIES; THAT ALL INSURER PARTIES ARE TO FILE,
24 WITHIN 15 DAYS, A NOTICE OF INTENT TO ASSERT AN ABSOLUTE
25 POLLUTION EXCLUSION DEFENSE SO THAT PEOPLE HAVE TO COME UP
26 AND PUT IT ON THE TABLE THAT THEY ARE ASSERTING THAT
27 DEFENSE, AND THEN WE'LL KNOW WHICH INSURERS ARE TAKING THAT
28 POSITION.

1 MR. ELLISON: THE ONLY ISSUE AGAIN, YOUR HONOR, IS WE
2 DON'T KNOW WHICH POLICIES ARE AT ISSUE YET. I GUESS UNTIL
3 VULCAN FILES IT'S CROSS-COMPLAINT AGAINST -- MY CLIENT'S
4 INTENT WAS NOT TO SUE AFTER THE POLLUTION EXCLUSION
5 CARRIERS. AND SO IF THERE ARE ANY IN THERE, THEY ARE
6 PROBABLY IN THERE ACCIDENTLY AT THIS POINT.

7 VULCAN MAY ASSERT THAT -- MY CLIENT MAY HAVE
8 ISSUED POLICIES AFTER 1985. I HAVE NO IDEA. BUT IF VULCAN
9 WERE TO MAINTAIN THAT SOME OF THOSE POLICIES WHICH ARE NOT
10 IN THIS LITIGATION ARE AT ISSUE, THEN WE WOULD HAVE AN
11 ISSUE. THEY MAY NOT -- VULCAN MAY AGREE THAT SOME OF THESE
12 POLICIES PROVIDE NO COVERAGE.

13 THE COURT: ALL RIGHT.

14 MR. BROWN.

15 MR. BROWN: I WAS JUST GOING TO SAY THE FACT THAT THERE
16 ARE SOME PARTIES WHO AREN'T PARTIES YET MAY BE SOMETHING WE
17 SHOULD CONSIDER. THE POLICY MR. WONG DESCRIBED, FOR
18 EXAMPLE, IS A POLICY ON WHICH STREET IS AN ADDITIONAL
19 INSURED. SO IF STREET IS GOING TO BE ADDED TO THIS CASE,
20 RESOLVING IT WITHOUT THEM DOESN'T REALLY RESOLVE IT.

21 WHAT WE HAVE HERE WHERE WE TALK ABOUT THAT POLICY
22 AS AN EXAMPLE WHERE THE INSURER THINKS IT'S ABSOLUTE. WE
23 THINK IT'S NOT.

24 THE COURT: BUT THAT'S USUALLY A QUESTION OF LAW THAT
25 YOU OUGHT TO BE ABLE TO PUT ON THE TABLE. AND FOR WANT OF
26 A BETTER DECISION MAKER, I'LL GIVE YOU WHAT I CAN AND YOU
27 CAN TAKE IT WHERE YOU WANT.

28 MR. BROWN: WHAT I WAS GOING TO SAY WAS IT'S

1 CONCEIVABLE THAT ANOTHER INSURANCE COMPANY WOULD AGREE WITH
2 ME RATHER THAN WITH MR. WONG. THAT IT'S NOT AN ABSOLUTE
3 POLLUTION EXCLUSION. IT EXCLUDES SOME THINGS AND NOT
4 OTHERS.

5 THE COURT: UNLESS THEY ARE IN EITHER A VERTICAL LINE
6 WITH MR. WONG'S POLICY OR SOMETHING -- IT ISN'T A FREE FOR
7 ALL. EVERY INSURER THAT'S IN THE ROOM DOESN'T HAVE A SAY
8 IN EVERY ISSUE THAT GETS PUT ON THE TABLE. AND I FOUGHT
9 THAT BATTLE IN OTHER PROCEEDINGS AND I'M WILLING TO LET ALL
10 THOSE WHO TRULY HAVE A DOG IN THE FIGHT MAKE THEIR POSITION
11 KNOWN. BUT SOME PARTIES HAVE TO SIT ON THE SIDELINES
12 BECAUSE IT DOESN'T AFFECT THEM.

13 MR. BROWN: YES.

14 MR. WONG: YOUR HONOR, I WONDER IF WE COULD ADDRESS
15 MR. ELLISON'S CONCERN AND INDEED MR. BROWN'S CONCERN, IF
16 SOMETHING LIKE MAYBE 15 DAYS AFTER THE CROSS-COMPLAINT IS
17 FILED WE'LL KNOW WHAT POLICIES HAVE BEEN NAMED OR WHAT
18 INSURERS HAVE BEEN INCLUDED. AND I CAN ASSURE THE COURT
19 THAT ON BEHALF OF TRANSPORT IT WOULD NOT BE A PROBLEM,
20 LET'S SAY 15 DAYS THEREAFTER FOR US TO FILE SOME SORT OF
21 NOTICE OF INTENT THAT WE WILL BE ASSERTING AN ABSOLUTE
22 POLLUTION EXCLUSION WITH REGARD TO THIS 1981 POLICY --

23 THE COURT: LET'S DO THIS. WE'RE GOING TO HAVE ANOTHER
24 STATUS CONFERENCE IN SIX WEEKS OR SO. THE AMENDED
25 CROSS-COMPLAINT WILL BE ON FILE. YOU WILL BE GIVING ME A
26 JOINT STATEMENT. YOU WILL HAVE HAD A CHANCE TO MEET AND
27 CONFER.

28 IF YOU CAN COME TO ME WITH -- IF YOU ARE REALLY

1 ANXIOUS TO GO FORWARD, MR. WONG, I'M NOT OPPOSED TO PUTTING
2 AN ISSUE ON THE ABLE FOR TRANSPORT OR FOR SOME OTHER
3 CARRIER.

4 MR. BROWN, IF YOU THINK THERE'S ANOTHER A.P.E. AT
5 ISSUE ON THE CLAIMS THAT YOU ARE ASSERTING WITH A CARRIER
6 THAT WOULD BE MORE USEFUL TO HAVE A DETERMINATION ON, PUT
7 IT ON THE TABLE.

8 NOW, IF WE'RE BRINGING NEW PARTIES IN, THEY ARE
9 ALL GOING TO JUMP UP AND DOWN AND SAY WE NEED SOME MORE
10 TIME TO FIGURE OUT WHAT'S GOING ON. SO WE MIGHT NOT BE
11 ABLE TO DO IT AS FAST AS WE'D LIKE TO, BUT EXPLORE THOSE
12 IDEAS. RIGHT NOW WE'RE GETTING OUR ARMS AROUND ALL THIS
13 STAGE, EVEN THOUGH IT'S BEEN TWO YEARS, IT TAKES TIME FOR
14 THESE THINGS TO MOVE. IT'S LIKE TURNING A BIG SHIP AROUND
15 IN A SMALL CANAL. IT'S TOUGH TO DO, AND IT TAKES A LOT OF
16 TIME. WE'LL JUST DO THE BEST WE CAN.

17 AT THE NEXT STATUS CONFERENCE I WOULD HOPE -- I
18 KEEP PRETTY GOOD NOTES. I LOOK AT THESE NOTES BEFORE EACH
19 STATUS CONFERENCE. WHEN YOU FILE YOUR STATEMENTS I TRY TO
20 FOLLOW UP AND KEEP THINGS ON THE TABLE, SO THEY CAN'T JUST
21 SLIP BY THE WAYSIDE. AND WE'LL SEE WHERE WE ARE IN SIX
22 WEEKS OR SO.

23 OKAY. ON THIS LAST ISSUE I'M THE FIRST TO ADMIT I
24 DON'T EVEN KNOW ENOUGH TO BE DANGEROUS ABOUT THIS TOPIC AND
25 I'M SURE I'LL LEARN MORE ABOUT IT. BUT ON THESE INSOLVENT
26 INSURERS AND DROP-DOWN ISSUES, IS IT A WIDE-OPEN ISSUE AS
27 WELL AS A LOT OF OTHER THINGS PEOPLE SEEM TO BRING HERE, OR
28 IS THERE SOME PRECEDENT THAT EXPLAINS WHAT IT IS?

1 MR. ELLISON: YOUR HONOR, I'LL ADDRESS THIS BECAUSE
2 IT'S AN ISSUE I TEED UP. AND AGAIN, I WAS -- IN THE THEME
3 OF TRYING TO FIND SOME THINGS WE COULD RESOLVE IN THE CASE,
4 I THOUGHT THIS MIGHT BE A GOOD ONE. IT'S NOT A WIDE-OPEN
5 ISSUE. I THINK THERE'S PRETTY SET LAW. I DON'T KNOW IF
6 THERE'S DISAGREEMENT ON IT.

7 I THINK THERE ARE CERTAINLY INSOLVENT -- POLICIES
8 ISSUED BY INSOLVENT INSURERS. THEY ARE AT JUST ABOUT THE
9 LOWEST LEVEL AND SOME HIGHER LEVEL. AND SO AS A NOT SIMPLY
10 ACADEMIC ISSUE, WHETHER ANY INSURERS HAVE TO DROP DOWN THAT
11 ARE EXCESS TO THOSE POLICIES, THE CASE LAW IN CALIFORNIA
12 CERTAINLY IS FAIRLY CLEAR ON WHAT CERTAIN TYPES OF
13 LANGUAGE -- WHAT THE LEGAL IMPACT OF CERTAIN TYPES OF
14 LANGUAGE IS. AND SO I THINK IT CAN BE FAIRLY EASILY
15 BRIEFED. SIMILARLY IN OTHER STATES THAT MAY BE RELEVANT, I
16 THINK THERE'S PRETTY GOOD LAW.

17 SO I'D SUGGEST THIS IS ONE THAT WOULD BE PERFECT
18 FOR THE PARTIES TO TRY AND MEET AND CONFER AND SEE IF WE
19 CAN REACH A STIPULATION. AND IF NOT, TEE IT UP FOR A
20 THRESHOLD ISSUES DETERMINATION BASED ON JUST A COUPLE OF
21 EXEMPLARS. THERE'S ONLY A FEW DIFFERENT TYPES OF LANGUAGE.
22 SO WE COULD TEE THAT UP AND GET THAT ISSUE OFF THE TABLE AT
23 LEAST.

24 THE COURT: WHAT ABOUT YOUR VIEW ON THAT, MR. BROWN?

25 MR. BROWN: I THINK MEETING AND CONFERRING IS A GOOD
26 IDEA. THERE IS A LOT OF LAW ON IT, BUT WHAT THERE ISN'T A
27 LOT OF CLEAR LAW ON IS HOW THAT ISSUE, ONCE IT'S RESOLVED,
28 INTERRELATES WITH OTHER ISSUES.

1 IF YOU HAVE AN INSOLVENT CARRIER IN THESE THREE
2 YEARS AND YOU HAVE A SOLVENT CARRIER IN THESE OTHER THREE
3 YEARS, AND YOU SELECT THE SOLVENT CARRIER TO PAY THE CLAIMS
4 AND EXHAUST THE SOLVENT CARRIER'S POLICY, I WOULD SAY THAT
5 YOU THEN COULD TURN TO THE EXCESS INSURER, EXCESS OF THE
6 INSOLVENT PRIMARY TO PAY THE REMAINDER.

7 THE COURT: SO YOU HAVE YOU MULTIPLE PRIMARIES. THE
8 INSURED SELECTS THE POLICY IT WANTS TO MAKE THE CLAIMS ON.
9 AND THE QUESTION IS WHETHER THERE'S GOT TO BE SOME
10 HORIZONTAL EXHAUSTION.

11 AND IF THERE'S NO -- IF THIS IS AN INSOLVENT
12 CARRIER, I GUESS THE ISSUE THAT I RAISE, AND I DON'T KNOW
13 IF THIS IS WHERE IT GOES, IS THAT POTENTIALLY VULCAN HAS TO
14 MAKE UP THE MISSING COVERAGE, OR DO YOU GO STRAIGHT UP ON A
15 VERTICAL LINE, OR DO YOU HAVE TO ALLOCATE AMONG
16 NON-SELECTED PRIMARY POLICIES?

17 I DON'T KNOW THE ANSWER. YOU ALL PROBABLY KNOW IT
18 BETTER THAN I DO. I'VE GOT IT PENDING IN ANOTHER CASE.
19 IT'S HEATING UP PRETTY GOOD.

20 MR. BROWN: IF THIS WERE A CASE THAT REQUIRED
21 HORIZONTAL EXHAUSTION, I'M NOT SAYING THAT IT IS. WE
22 WOULD -- UNDER CALIFORNIA LAW WE CLEARLY, THE INSURED,
23 WOULD NOT EAT A SHARE FOR THE SAKE OF THE INSOLVENTS.

24 BUT THE POINT I WAS MAKING IS THAT ONE MIGHT BE
25 ABLE TO EXHAUST THE UNDERLYING COVERAGE, IF YOU WILL, BY
26 USING UP A NEXT DOOR NEIGHBOR PRIMARY POLICY RATHER THAN
27 THE INSOLVENT POLICY.

28 THE COURT: WELL, VULCAN IS NEVER GOING TO SELECT AN

1 INSOLVENT INSURER'S POLICY AS TO THE POLICY THEY WANT TO
2 MAKE A CLAIM ON.

3 MR. BROWN: RIGHT. I'M JUST SAYING IF THERE'S A
4 DECISION BY THIS COURT THAT THE LANGUAGE IN THIS FIRST
5 STATE POLICY DOES NOT REQUIRE IT TO DROP DOWN AND TAKE THE
6 PLACE OF THIS INSOLVENT IDEAL POLICY, THAT DOESN'T GET THE
7 FIRST STATE POLICY OUT OF THE MIX; THAT'S ALL.

8 I DON'T MIND MEETING AND CONFERRING AND --

9 THE COURT: YOU SHOULD FOCUS SOME OF THESE ISSUES.
10 BRING THEM TO ME. I WANT TO HELP YOU GET THEM ON THE TABLE
11 AND GET SOME RESOLUTION. THERE'S JUST NO EASY WAY TO SAY
12 WE'LL SET A TRIAL DATE IN THIS CASE AND WE'LL GO FORWARD
13 AND SEE WHAT HAPPENS. IT'S NOT THE BEST WAY TO DO IT.

14 WE'VE MADE A LOT OF PROGRESS IN OTHER CASES THAT
15 ARE SIMILAR TO THIS, AND I BELIEVE WE CAN DO IT HERE, TOO.
16 BUT IT TAKES SOME LEVEL OF COOPERATION WITH THE COURT TO
17 GET THESE ISSUES ON THE TABLE. SO LET'S HOPE TO HAVE SOME
18 OF THAT BACK NEXT MONTH.

19 ALL RIGHT. THERE WAS A CASE THAT CAME DOWN WITHIN
20 THE LAST WEEK -- MAYBE LAST MONTH -- THAT TALKED ABOUT --
21 AND I THINK IT WAS IN A PROPERTY CLAIM. THE AEROJET CASE
22 OUT OF SACRAMENTO -- IT BASICALLY WENT BACK AND SAID IF YOU
23 DON'T HAVE A JUDGMENT YOU CAN'T RECOVER FOR SETTLEMENTS.

24 IS THAT GOING TO COME INTO PLAY IN THIS CASE?

25 I ASK THESE QUESTIONS JUST TO LIGHTEN THE LOAD
26 HERE.

27 MR. WONG: YOUR HONOR, I'LL MAKE FULL DISCLOSURE. I
28 WAS COUNSEL OF RECORD IN THAT CASE, AND SO FULLY AWARE OF

1 THE CASE.

2 AND AS MR. BROWN -- INDEED, AS ALL THE PARTIES
3 KNOW, THAT HAS BEEN THE TOPIC OF DISCUSSION WITH REGARD TO
4 SOME OF THE MEDIATIONS THAT WE'VE HAD. SO IT'S CERTAINLY
5 SOMETHING THAT THE PARTIES HAVE CONSIDERED.

6 THE COURT: WELL, IF IT'S A REAL ISSUE -- I READ THESE
7 THINGS AND I TRY AND TUCK THEM IN THE FILES THAT I KEEP IN
8 THESE VARIOUS CASES THINKING IT MIGHT HAVE SOME IMPACT; IT
9 MIGHT NOT, I DON'T KNOW. BUT I LIKE TO STAY CURRENT. AND
10 I THINK IF THAT'S A BIG ISSUE, THAT'S ONE THAT WE OUGHT TO
11 BE LOOKING AT.

12 MR. BROWN: I THINK IT'S NOT A BIG ISSUE WITH RESPECT
13 TO THE MODESTO CLAIM THAT SETTLED. WE WERE AWARE OF THAT
14 CASE BEFORE THE DEFENSE LAWYERS SETTLED THE MODESTO CASE.
15 WE TALKED WITH THE INSURERS ABOUT THAT ISSUE. AND AT LEAST
16 MOST OF THE INSURERS IN VULCAN ARE OF THE SAME MIND OF THAT
17 NOT BEING AN ISSUE AS TO THAT SETTLEMENT.

18 THE COURT: OKAY. AND I FULLY ACCEPT THAT. AGAIN,
19 OFTEN I ONLY KNOW ENOUGH TO BE DANGEROUS, BUT I WANT TO
20 MAKE SURE WE'RE PAYING ATTENTION TO WHAT'S GOING ON. AND
21 IF IT HAS SOME BEARING ON IT, BRING IT IN.

22 MR. WONG, I'M SURE THAT IF YOU THINK IT APPLIES IN
23 SOME WAY, YOU DO THAT. I WOULDN'T THINK KNOWING THAT THE
24 CASE WAS PENDING, AND KNOWING THAT THAT WAS OUT THERE YOU
25 WOULD MAKE THE SETTLEMENTS WITHOUT GETTING SOME CONSENTS OR
26 SOMETHING LIKE THAT.

27 MR. BROWN: THE FUN THING WAS IT ALL HAPPENED THE SAME
28 WEEK.

1 THE COURT: IT WAS THE END OF JANUARY?

2 MR. BROWN: IT HAD BECOME FINAL THEN, IN THE SENSE THAT
3 THE PETITION FOR REVIEW WAS DENIED, BUT THE DECISION ITSELF
4 CAME OUT IN SEPTEMBER, LATE AUGUST.

5 THE COURT: I THOUGHT IT WAS MORE RECENTLY THAN THAT
6 THAT I HAD SEEN SOMETHING.

7 ANY OTHER ISSUES WE NEED TO TALK ABOUT? IT SEEKS
8 LIKE WE HAVE A LOT ON OUR PLATE. WE'RE NOT MAKING A LOT OF
9 PROGRESS, WE CERTAINLY HAVEN'T TODAY. WE'VE TALKED ABOUT
10 ISSUES THAT I WOULD EXPECT TO COME BACK ON A LITTLE MORE
11 FOCUSED BASIS BY THE NEXT STATUS CONFERENCE.

12 DO WE HAVE A FURTHER DATE IN THIS CASE? IF WE
13 DON'T, I'M GOING TO GIVE YOU ONE.

14 MR. WONG: YOUR HONOR, BEFORE WE DO THAT --

15 THE COURT: I HAVE THAT BEFORE ME. I WAS SO IMPRESSED,
16 MR. WONG, ALL THE COLORS AND EVERYTHING.

17 MR. WONG: I STOOD UP, YOUR HONOR, NOT TO TRY TO TAKE
18 CREDIT BECAUSE I CERTAINLY DON'T DESERVE ANY CREDIT WITH
19 REGARD TO THIS, BUT CERTAINLY MS. CHANG AND MS. FENG HAVE
20 TAKEN THE LABORING OAR. THEY'VE HAD A LOT OF QUALITY
21 SUGGESTIONS TO REACH THIS POINT. AND I THINK THEY SHOULD
22 BE COMMENDED, YOUR HONOR.

23 THE COURT: I NEED A TUTORIAL ON HOW TO READ IT. IT'S
24 GOING TO TAKE SOME TIME, BUT IT WAS VERY IMPRESSIVE. I
25 ALSO LIKE THE COLORS AND ALL THAT STUFF.

26 HAS THIS BEEN CIRCULATED? I KNOW YOU FILED IT.
27 SO EVERYBODY GOT A COPY OF IT?

28 MS. BAKER: YES, YOUR HONOR.

1 THE COURT: DOES THIS COVER -- THIS GOES FROM '60 TO
2 '86. IS THAT BASICALLY THE COVERAGE PERIOD THAT WE'RE
3 LOOKING AT HERE?

4 UNIDENTIFIED SPEAKER: DO YOU WANT TO GO OR DO YOU WANT
5 ME TO GO?

6 MR. BROWN: I LIKE TO HEAR WHAT YOU HAVE TO SAY.

7 UNIDENTIFIED SPEAKER: THERE'S ONE POLICY, A LEXINGTON
8 POLICY, THAT'S MY CLIENT THAT'S A '97 TO '99 POLICY THAT'S
9 NOT REFLECTED IN THE CHART. IT'S A CLAIMS MADE STAND-ALONE
10 EXCESS, THAT HAS A LARGE NAME, AND IT'S NOT A TYPICAL CGL
11 POLICY; THAT ISSUE HAS BEEN AN ISSUE IN DISCUSSIONS BETWEEN
12 LEXINGTON AND VULCAN.

13 FIRST THEY DIDN'T INCLUDE THAT POLICY SO
14 TECHNICALLY AT THIS POINT IT MAY NOT BE INVOLVED IN THE
15 CASE, BUT IT MAY BE AT ISSUE.

16 THE COURT: AND YOU ARE GOING TO BRING IT IN IN YOUR
17 CROSS-COMPLAINT, MR. BROWN?

18 MR. BROWN: THAT'S MY INTENTION.

19 THE COURT: ALL RIGHT. WELL, WHAT I'VE ALWAYS TRIED TO
20 DO, WITH A LIMITED AMOUNT OF SUCCESS, IS TO GET PEOPLE TO
21 AGREE ON A POLICY CHART THAT WE CAN USE IN GOING FORWARD
22 AND KIND OF KEEP TRACK OF WHERE WE ARE AND WHAT WE'RE
23 DEALING WITH.

24 THIS IS OUT ON THE TABLE, AT LEAST IT'S A START.
25 AND I THANK ALL OF THE PEOPLE THAT WERE INVOLVED IN PUTTING
26 IT TOGETHER. AND WE'LL SEE WHERE WE GO FROM THERE.

27 ALL RIGHT. HOW MUCH TIME DO YOU WANT TO DO ALL
28 THESE HOMEWORK ASSIGNMENTS AND THEN COME BACK?

1 MR. ELLISON: SIX WEEKS.

2 THE COURT: APRIL 29TH IS A GOOD DAY FOR US; THAT WOULD
3 BE EITHER MORNING OR AFTERNOON, APRIL 30TH, MAY 6TH, MAY
4 1ST, I THROW OUT A LOT OF DATES BECAUSE THERE ARE ALWAYS A
5 LOT OF CONFLICTS AND I'D LIKE TO ACCOMMODATE AS MANY PEOPLE
6 AS WE CAN.

7 MR. WONG: YOUR HONOR, I'M JUST WONDERING WHETHER WE
8 MIGHT BE ABLE TO HAVE A FURTHER CASE MANAGEMENT CONFERENCE
9 EARLIER THAN THAT. MS. ROLAND AND I ARE INVOLVED IN A CASE
10 THAT'S SET FOR TRIAL IN EARLY MAY. SO TO THE EXTENT THAT
11 WE CAN DO SOMETHING EARLIER IN APRIL THAT WOULD BE HELPFUL.

12 THE COURT: ALL RIGHT. WELL, I'M OUT THE 23RD THROUGH
13 THE 25TH.

14 WOULD THE 28TH -- IS THAT TOO LATE? DO YOU WANT
15 TO KEEP THAT WHOLE WEEK CLEAR? BECAUSE THAT DAY IS OPEN
16 ALSO.

17 MR. ELLISON: I ACTUALLY HAVE A TRIAL STARTING THE
18 28TH.

19 THE COURT: THE AFTERNOON OF THE 16TH? THAT'S ONLY
20 FOUR OR FIVE WEEKS. AND I'M HAPPY TO SET YOU FOR THAT, BUT
21 I'M NOT SURE IT'S ENOUGH TIME TO REALLY MEANINGFULLY TALK
22 ABOUT ALL OF THE ISSUES YOU WANT TO TALK ABOUT AND TO GIVE
23 ME SOME REASONABLE RESPONSE.

24 LET ME LOOK AT -- YEAH, THE 22ND IS BAD FOR US. I
25 COULD PROBABLY DO A LATE AFTERNOON CONFERENCE, THAT WOULD
26 BE 2:30 OR 3:00 ON THE 21ST?

27 MR. WONG: THAT WOULD BE FINE, YOUR HONOR.

28 THE COURT: IS THAT GOOD ENOUGH?

1 ALL RIGHT.

2 MR. BROWN: THAT'S FINE.

3 MS. ROLAND: WHAT TIME WAS THAT, YOUR HONOR?

4 THE COURT: 3 O'CLOCK. I HAVE A 1:30 AND I GENERALLY
5 DON'T SET MORE THAN ONE SO THAT PEOPLE DON'T WAIT AROUND.
6 LET'S SAY 3 O'CLOCK. DO WE HAVE TRAVELERS THAT THAT CAUSES
7 A PROBLEM FOR? THERE AREN'T MANY SOUTHWEST PLANES FLYING
8 ANYWAY, SO YOU MAY HAVE TO FIND ANOTHER WAY TO TRAVEL.

9 AND THE JOINT STATEMENT FOR THAT STATUS CONFERENCE
10 WILL BE DUE, SAY THE 17TH -- 4/17, ALONG WITH ANY
11 STIPULATIONS. AND I'M NOT OPPOSED TO HAVING YOU FILE TWO
12 OR THREE DIFFERENT JOINT STATEMENTS ON THE ISSUES THAT
13 WE'VE TALKED ABOUT. IT DOESN'T ALL HAVE TO BE IN ONE
14 STATEMENT, HOWEVER YOU WANT TO APPROACH IT. BUT IF YOU GET
15 THEM ALL ENTERED BY THE 17TH, I'LL TRY AND GET THROUGH THEM
16 AND HAVE SOME RESPONSE TO YOU THROUGH THAT HEARING. ALL
17 RIGHT.

18 ANYTHING ELSE?

19 MR. WONG: THANK YOU, YOUR HONOR.

20 MR. BROWN: THANK YOU, YOUR HONOR.

21 THE COURT: THANK YOU.

22
23 (THE PROCEEDINGS WERE CONCLUDED.)

24

25

26

27

28

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES

3 DEPARTMENT 311 HON. CARL J. WEST, JUDGE
4

5 FIRST STATE INSURANCE COMPANY,)
6 PLAINTIFF,) NO. BC 354664
7 VS.)
8 VULCAN MATERIALS COMPANY, ET AL.,) REPORTER'S
9 DEFENDANTS.) CERTIFICATE
10 _____
11
12

13 I, WENDY OILLATAGUERRE, OFFICIAL REPORTER OF
14 THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF
15 LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING PAGES 1
16 THROUGH 38, INCLUSIVE, COMPRIZE A FULL, TRUE, AND CORRECT
17 TRANSCRIPT OF THE PROCEEDINGS TAKEN IN THE MATTER OF THE
18 ABOVE-ENTITLED CAUSE ON WEDNESDAY, MARCH 12, 2008.

19
20 DATED THIS 23RD DAY OF MARCH, 2008.
21
22

23  , CSR NO. 10978
24 OFFICIAL REPORTER
25
26
27
28